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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

TOM GONZALES,

Plaintiff,

vs.

DESERT LAND, LLC et al.,

Defendants.

2:15-cv-00915-RCJ-VPC

**ORDER**

This case is the third action in this Court by Plaintiff Tom Gonzales concerning his entitlement to a fee under a plan of confirmation the undersigned entered years ago while sitting as a bankruptcy judge.

**I. PROCEDURAL HISTORY**

**A. The Desert Land Bankruptcies**

On December 7, 2000, Plaintiff loaned \$41.5 million to Desert Land, LLC and Desert Oasis Apartments, LLC to finance their acquisition and development of land in Las Vegas, Nevada. The loan was secured by a deed of trust. On May 31, 2002, Desert Land, LLC, Desert Oasis Apartments, LLC, and Desert Ranch, LLC (collectively, "the Desert Entities") filed for bankruptcy, and the undersigned jointly administered those bankruptcies while sitting as a bankruptcy judge. The bankruptcy court confirmed the Second Amended Plan of Reorganization

1 (“the Plan”), and the resulting confirmation order (“the Confirmation Order”) included a finding  
2 that a settlement had been reached (“the Settlement Agreement,” which, along with the Plan, was  
3 attached to the Confirmation Order) under which Gonzales would extinguish his note and  
4 reconvey his deed of trust as to his interest in Parcel A, Gonzales and another party would  
5 convey their fractional interests in Parcel A to Desert Land, LLC and/or Desert Oasis  
6 Apartments, LLC so that those entities would own 100% of Parcel A, Gonzales would receive  
7 Desert Ranch, LLC’s 65% interest in another property, and Gonzales would receive \$7.5 million  
8 or \$10 million if Parcel A were sold or otherwise transferred, depending on the date of transfer  
9 (“the Parcel A Transfer Fee”). Gonzales appealed, and the Bankruptcy Appellate Panel affirmed  
10 except as to a provision subordinating Gonzales’s interest in the Parcel A Transfer Fee to up to  
11 \$45 million in financing. The Court of Appeals affirmed.

12 **B. The First Action**

13 In 2011, Gonzales sued Desert Land, LLC; Desert Oasis Apartments, LLC; Desert Oasis  
14 Investments, LLC; Specialty Trust; Specialty Strategic Financing Fund, LP; Eagle Mortgage Co.;  
15 and Wells Fargo in state court for: (1) declaratory judgment that a transfer of Parcel A had  
16 occurred entitling him to the Parcel A Transfer Fee; (2) declaratory judgment that the lender  
17 defendants in that action knew of the bankruptcy proceedings and the requirement of the Parcel  
18 A Transfer Fee; (3) breach of contract; (4) breach of the implied covenant of good faith and fair  
19 dealing; (5) judicial foreclosure against Parcel A under Nevada law; and (6) injunctive relief.  
20 The defendants removed the case to the bankruptcy court, which suggested withdrawal of the  
21 reference because the undersigned had issued the Confirmation Order while sitting as a  
22 bankruptcy judge. One or more parties so moved, and the Court granted the motion. In that  
23 case, No. 3:11-cv-613, the Court ruled against Gonzales, and the Court of Appeals affirmed,  
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1 ruling that the Parcel A Transfer Fee had not been triggered based on the allegations made there,  
2 and that Plaintiff had no lien against Parcel A.

3 **C. The Second Action**

4 In the Second Action, No. 2:13-cv-931, also removed from state court, Gonzales alleged  
5 that Shotgun Investments Nevada, LLC had made various loans to the Desert Entities for the  
6 development of Parcel A between 2012 and January 2013 despite its awareness of the Plan and  
7 the Parcel A Transfer Fee provision therein. Plaintiff sued Shotgun Investments Nevada, LLC  
8 (erroneously named as “Shotgun Nevada Investments, LLC”); Shotgun Creek Las Vegas, LLC;  
9 Shotgun Creek Investments, LLC; and Wayne M. Perry for intentional interference with  
10 contractual relations, intentional interference with prospective economic advantage, and unjust  
11 enrichment. The defendants removed and moved for summary judgment, arguing that the  
12 preclusion of certain issues decided in the First Action controlled the Second Action. The Court  
13 granted that motion as a motion to dismiss, with leave to amend.

14 Gonzales amended, and the defendants moved for summary judgment. The Court struck  
15 the conspiracy and declaratory judgment claims, because Gonzales had no leave to add them.  
16 The Court otherwise denied the motion for summary judgment, although the Court noted that the  
17 intentional interference with prospective economic advantage claim was legally insufficient. The  
18 defendants moved for summary judgment after further discovery. The Court denied the motion  
19 and a motion to reconsider but granted a motion to strike the untimely jury demand. The sole  
20 claim remaining for a bench trial was then the claim for intentional interference with contractual  
21 relations. The parties settled during trial.

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